



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNR, OPR, OLC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated November 1, 2010. The hearing was also convened to deal with the landlord's application for an Order of Possession based on the Notice.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid Rent should be cancelled. The questions to be answered include:
 - Was the Notice valid and enforceable? Is so:
 - Did the tenant violate the Act by failing to pay rent when rent was due?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

Background and Evidence

Submitted into evidence was a copy of the Ten-Day Notice to End Tenancy dated November 1, 2010, a copy of a tenancy agreement showing rent was \$400.00, a copy of a Notice of Rent Increase signed on July 20, 2010 purporting to increase the monthly rent from \$400.00 to \$430.00, copies of communications between the parties including a letter dated November 9, 2010 advising the tenant that *"the company will no longer take a check from you. The only way to pay your rent is by way of a money order, certified check mailed to the company's address or by paying cash when the office is open. You are late for Nov and the additional \$25.00 late fee is now required by you.."*

The landlord testified that the tenancy began on September 1, 2008 with rent of \$400.00. The tenancy agreement showed that a security deposit of \$172.50 was paid on September 1, 2008. The landlord testified that the tenant's monthly \$400.00 rent was recently increased by \$30.00 because he was no longer worked for the company under a verbal contract that had, according to the landlord, developed at some time during the tenancy. The landlord testified that the tenant failed to pay his \$430.00 rent due on November 1, 2010 and when this was not paid, a Ten-Day Notice was issued on November 1, 2010, after business hours. The landlord acknowledged that a cheque from the government paying the landlord \$400.00 directly on behalf of the tenant was received but was returned to the tenant because the landlord had implemented a policy not to accept any cheques due to problems with payments by tenants. The landlord was seeking an end to the tenancy and Order of Possession based on the Notice.

The tenant testified that the Notice should be cancelled because the cheque from the ministry for the rent was sent to the landlord directly from the government well ahead of the first day of the month and it was the landlord's decision to reject the funds then issue an unwarranted Notice to end Tenancy. The tenant stated that there has never been any problem with his rent payment and in fact this method of payment has been in place for the past 11 months without any delays or non-payment issues. The tenant's position was that the landlord was utilizing this new "company policy" as a means to unfairly hamper the tenant and end the tenancy without cause. The tenant stated that one reason he wanted the landlord to be paid directly by the Ministry is so that his rent payment would not be withheld or mishandled by the landlord's agent to falsely justify a late fee or eviction. The tenant testified that the landlord had returned the November rent cheque from the Ministry that was made out in the landlord's name for payment instead of depositing it or cashing it

The tenant also disputed that any rent reduction had ever been given for employment with the landlord. The tenant stated that, in fact his rental rate on the tenancy agreement should be shown as \$350.00 per month, with additional charges of \$25.00 for parking and \$25.00 for storage costs, not merely \$400.00 as indicated. The tenant stated that these extra fees were not justified being that he does not use the storage area nor the parking space. The tenant stated that he was never provided with a copy of his tenancy agreement after it was signed and did not receive it until he got the evidence package for the purpose of the hearing.

The tenant objected to the purported rent increase arbitrarily raising his rent from \$400.00 to \$430.00 per month on the basis that the increase violated the Act..

The tenant was seeking an order to clarify the legal rent to be charged and to compel the landlord to accept payment via a cheque directly from the Ministry.

Analysis

Rent Increase

In regards to the purported rent increase, I find that rent shown on the tenancy agreement signed on August 20, 2008 verified rent was set at \$400.00 per month. I find that the Notice of Rent Increase purported to increase the rent by \$30.00 to \$430.00 per month and the amount exceeded the 3.2% permitted under section 43 of the Act and Regulation. In addition, I find that the Notice to Increase Rent form had not been completed properly. Accordingly, I find that the Notice of Rent increase imposed by the landlord was not compliant with the act and was therefore of no force nor effect.

The Act provides that if a landlord collects a rent increase that does not comply with the Regulation, the tenant is entitled to deduct the increase from rent or otherwise recover the increase if already paid. In this instance it appears that the noncompliant rent increase was not imposed until November 1 2010, so the tenant had not actually overpaid the rent pursuant to the increase. I find that the lawful rental rate for this tenancy is \$400.00 per month and will remain at this rate until a compliant Notice of Rent Increase is served. I also find that the rent does not include parking nor storage as part of the \$400.00 rent.

In regards to the Ten-Day Notice, the landlord was seeking to end the tenancy for unpaid rent. Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 26 of the Act does state that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act.

However, I find that the Ten-Day Notice was issued by the landlord on November 1, 2010, in regards to rent that would not be considered to be in arrears unless it was still left unpaid as of November 2, 2010.

Moreover, I find that the tenant 's rent payment for November had been forwarded by the Ministry on the tenant's behalf prior to the date rent was due. I find that this payment was rejected by the landlord who inappropriately returned it to the tenant.

Based on the foregoing, I find that the Ten Day Notice to End Tenancy for Unpaid Rent must be cancelled.

I find that the tenant is now entitled to pay the rent for November that was previously declined by the landlord and the tenant is ordered to pay \$400.00 forthwith.

In regards to the acceptable method of payment for rent, I reject the landlord's imposition of the "new policy" restricting payment to certified cheque, money order or cash. I find that the written Notice for the change was issued after the tenant had applied for dispute resolution. During the hearing, I find that the landlord did not establish a valid reason to suddenly impose limits on the tenant's payment options. I accept the tenant's testimony that a cheque sent to the landlord directly from the Ministry is a secure, efficient way of ensuring that the rent is paid and guaranteeing that there is a record of it being paid and that this method has functioned without incident to date. In any case, such payments are usually received in advance of the first day of each month. Should a lost mail situation arise, as feared by the landlord, the landlord would be able to contact the Ministry to arrange a replacement cheque.

Accordingly I find as an enforceable term of this tenancy that the tenant is at liberty to pay the rent by cash, certified cheque, money order or by direct payment from the Ministry in the form of a government cheque payable to the landlord.

In regards to the dispute regarding the landlord's access, I find that section 29 of the Act permits a landlord to enter a rental unit as necessary provided: (a) the tenant gives permission at the time or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

or an emergency exists and the entry is necessary to protect life or property.

The landlord and the tenant are instructed to comply with the Act in this regard. The parties are reminded that section 90 of the Act provides that a document posted on the door, in a mailbox or mail slot is deemed to be received on the 3rd day after it is left.

Other matters discussed at the hearing including allegations about a broken door, were found not to be material to this dispute and no findings were made.

Conclusion

In summary:

- I find that if the tenant must now pay rent for November in the amount of \$400.00 by giving the November rent cheque issued by the Ministry to the landlord.

- The Ten-Day Notice to End Tenancy dated November 1, 2010 is cancelled and of no force nor effect and the landlord's application for an Order of Possession is dismissed without leave.
- The Notice of Rent Increase issued by the landlord on July 20, 2010 is not valid and therefore the monthly rent for the suite remains at \$400.00 .
- I find that the tenant must henceforth pay rent to the landlord by certified cheque, money-order, bank draft, cash or through a government cheque sent directly from the Ministry to the landlord. I order that this constitutes a valid and enforceable term in the tenancy agreement between these two parties.
- I order both the landlord and tenant to cooperate and comply with section 29 of the Act in regards to landlord's access to inspect the unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 2010.

Dispute Resolution Officer